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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/830,176 | 04/21/2004 | Joel D. Martz | 3285A | 7731 |
| 7590 | 03/23/2006 | | EXAMINER | |
| DAVID M. WARREN 655 OAKLAND AVE. CEDARHURST, NY 11516 | | | SINGH, ARTI R | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1771 | |

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|----------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/830,176 | MARTZ, JOEL D. | |
| | Examiner Ms. Arti Singh | Art Unit 1771 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-13 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Response to Amendment***

1. The Examiner has carefully considered Applicant's amendments and accompanying remarks dated 1/10/06 in response to the nonfinal office action dated 08/10/05. Applicant's amendments to the specification have been entered. Applicant's amendment to the claim 1 has also been entered. At this time in the prosecution the only pending claims are 1-13. The objection made over the trademarks in paragraph 1 of the previous office action is withdrawn.

Response to Arguments

2. Applicant's arguments filed 01/10/06 have been fully considered but they are not persuasive. Applicant's only traversal is that the coating used by the cited art is not a film, and Applicant attempts to clarify the difference between a film and coating by describing the different scenarios, which is appreciated. However, it is the position of the Examiner that Applicant's specification does not define either a coating or a film that is being traversed, and therefore the usual industry know meaning of film and coatings are used. (In the most laymen of definitions such as that found in Merriam Webster's Dictionary, they define "film" as a thin covering or coating and "coating" as something that covers, both of which are met by the layer of cited art. In fact, If Applicant is choosing to define these terms then the specification must reflect the same, and/or be shown via an affidavit. Additionally, The arguments of counsel cannot take the place of evidence. *In re De Blauwe*, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984). Further, with post processing steps (evaporation of the solvent or heat pressing through rollers) or once the final product has solidified, a skilled artisan would not be able to tell the difference if a film or a coating was applied. Furthermore, although applicant is calling this layer a film it really is a coating, and not a

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preformed film. Thus, the rejection made in paragraphs 2-3 of the previous office action are maintained and this office action is made final.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6074738 issued to von Fragstein et al as set forth in previous office action at paragraphs 2-3.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Arti Singh whose telephone number is 571-272-1483. The examiner can normally be reached on M-F 9-5:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ms. Arti Singh
Primary Examiner
Art Unit 1771

Ars 03/20/06